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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Butte)

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In re R.A. et al., Persons Coming Under  
the Juvenile Court Law.

BUTTE COUNTY DEPARTMENT OF EMPLOYMENT  
AND SOCIAL SERVICES,

Plaintiff and Respondent,

v.

S.A.,

Defendant and Appellant.

C063279

(Super. Ct. Nos.  
J33133, J33134)

Appellant S.A., the mother of the minors R.A. (born July 2005) and H.A. (born August 2000), appeals from the juvenile court's orders terminating her parental rights. (Welf. & Inst. Code, §§ 395, 366.26; subsequent section references are to this code.) She contends the juvenile court should have applied the parent-child-relationship exception to terminating parental rights. We shall affirm the juvenile court's orders.

## FACTS AND PROCEDURE

In January 2007, appellant brought the six-year-old minor H.A. to the hospital. Medical staff determined she had sustained vaginal injuries consistent with sexual abuse, probably by forcible penetration. Asked what happened, H.A. replied "well mamma knows everything."

Appellant said H.A. was injured by a neighbor dog. A police officer tried to interview H.A. outside of appellant's presence, but appellant interrupted the interview two times. On the second interruption, appellant told H.A. "okay kiddo, we're outta here!" causing H.A. to reply, "Mom, give us seven minutes." She ignored the request and sat next to H.A. Appellant would not leave until the officer told her to go. Once appellant left, H.A. said the dog injured her.

H.A. and appellant went home accompanied by the officer. H.A. pointed out the panties she wore that day to the officer. However, appellant insisted her daughter had not worn panties. The officer noticed appellant intimidated her daughter. As the officer left appellant's home, H.A. began to walk to him, but appellant told her to go in the house.

Six days later, H.A. was taken to the hospital to undergo emergency surgery to treat a new vaginal injury. The Butte County Department of Employment and Social Services (DESS) filed detained petitions for both minors in February 2007.

In March 2007, H.A. told an interviewer that her father, J.A., repeatedly molested her by sticking his hand, finger and

private into her. As appellant was washing the blood off of H.A. before the first trip to the hospital, she asked H.A. how this had happened. H.A. said "dad hurt me," and appellant replied, "Nah, I don't want to hear that."

The juvenile court sustained the petitions in March 2007. DESS filed subsequent petitions (§ 342) in April 2007, alleging H.A. had been sexually assaulted by J.A., and appellant told H.A. she did not want to know about the molestation. In June 2007, the juvenile court sustained the subsequent petitions, continued the minors' foster placement, and ordered services for appellant.

According to an August 2007 addendum report, appellant now believed her daughter. Appellant's counselor said she was making progress in this area, and demonstrated belief in her daughter's disclosure. Appellant was attentive and loving to the minors during visits.

In addition to her weekly individual counseling, appellant was in joint counseling/therapeutic visitation with H.A., which was going very well. H.A. was just beginning to express her feelings to appellant regarding her sexual abuse. At these sessions, H.A. "has expressed through body language, tears, and words, how incredibly hard it is for her to tell her whole story to her mother." H.A.'s therapist was impressed with appellant, and believed joint therapy could allow H.A. to develop "a positive self image with good esteem around her personhood."

DESS recommended continued services, which the juvenile court ordered at the October 2007 six-month review hearing.

DESS recommended terminating services in the April 2008 status review report. In November 2007, appellant told the district attorney's office that she did not know what happened to H.A. When reminded about the medical evidence, appellant replied "doctors have been wrong." She told the interviewer she does not believe her daughter's statements regarding the second assault, as the timeline did not work.

In a phone call to her husband in jail, appellant said she loved him, missed him, and believed he was innocent. Appellant wore her wedding ring to treatment groups, and said there was DNA proof that the dog was responsible for the attack.

The minors were moved into their current foster home in December 2007, and had a good relationship with their foster parents. H.A. told the foster mother "daddy did only hurt me two times, all the other times when he used fingers and stuff didn't hurt." H.A. said that when she was sexually assaulted appellant would be in another room, or took the minor R.A. into another room. According to H.A., "I told my mom and she said it couldn't have happened." She told the foster mother, "I want to live with you until I'm 18 or 19 because I feel safe here."

The foster mother said H.A. stopped talking about the sexual assaults once the visits with appellant became unsupervised. After the visits, the minor R.A. had nightmares, and H.A. became clingier.

Appellant's therapist said appellant learned from her husband's defense attorney that dog DNA was found in H.A.'s

wounds. This led appellant to doubt her acceptance of H.A.'s story.

A contested 12-month review hearing was held from April through July 2008. Appellant's therapist testified that appellant had weekly sessions until a lack of funding reduced it to every other week. The therapist believed appellant would be a good mother once her husband was out of the picture. In her opinion, further therapy would be very helpful.

Testimony from the foster agency social worker indicated unsupervised visits ended because appellant did not believe H.A.'s disclosures. She felt appellant and H.A. have a "nice mother/daughter relationship." According to the supervisor, H.A. seemed happy to see appellant on visits, and asked when she would see her again.

A social worker for Children's Services Division (CSD) indicated appellant went back and forth over whether her husband committed the sexual assaults. She believed it was important for appellant to continue therapy, but it was not safe to return the minors to her care as she had an on-going relationship with her husband.

Testifying, appellant said she would put everything she had into keeping her children safe. H.A. initially told her a neighbor dog caused the injuries. Later, H.A. told appellant J.A. did this to her. At first, appellant struggled to believe her husband sexually assaulted H.A., but she now believed her daughter.

The juvenile court found DESS failed to provide appellant with reasonable services. It ordered an additional three and one-half months of services and set a combined 12- and 18-month review hearing for October 2008.

DESS again recommended terminating services in the October 2008 status review report. The minors were in the same foster home since their December 2007 placement, and had a very loving relationship with their foster parents.

In July 2008, appellant told a social worker she would let her husband back into the home if H.A. "feels he isn't a scary person." In August 2008, appellant's counselor said appellant was still "hanging on to the dog story."

Appellant whispered in H.A.'s ear during visits. According to H.A., "My mom asks me about my dad" and "How I feel about my dad." Appellant would also whisper such things to H.A. as "He is doing really good in jail." The foster agency social worker said appellant "usually does fine" on visits, but "if there is even a second, mom will whisper to [H.A.]."

Appellant denied accusations that she attended her husband's criminal hearings. In May 2008, a social worker and a deputy district attorney saw appellant and her parents talking to her husband's criminal defense attorney about their expert witness. The prosecutor said appellant provided discovery to her husband's defense counsel, including CSD reports.

In December 2008, DESS provided the juvenile court with a letter from H.A. to appellant. H.A. addressed appellant by her first name, and told her that she wanted to be adopted by her

foster parents. H.A. went on to say her foster parents "keep me safe and don't let anyone harm me." She does not want to live with appellant because she does not want J.A. to come back and hurt her. Her feelings are "frustrated, sad, disgusted," but she feels happy with her foster parents, who are "the best."

The combined 12- and 18-month review hearing was held in January and February 2009. J.A.'s criminal defense counsel testified that appellant twice met with him at his request, and that numerous documents, including reports from the dependency, were provided to him by the father's family.

Appellant's therapist testified that appellant was still having problems with H.A.'s disclosure when she began her treatment. For a couple of months, appellant wavered over believing her daughter. The therapist believed it was important for H.A. to have a therapeutic visit with appellant in order to help her heal.

A social service aide for CSD thought H.A. was not afraid of appellant, but at times did not fully trust or believe her. H.A.'s therapist believed H.A. was still too fragile for joint therapy with appellant. H.A. was comfortable with her foster parents and felt safe with them.

Appellant told the juvenile court she initiated divorce proceedings against J.A. She thought H.A. did not trust her.

The juvenile court terminated services and set a section 366.26 hearing.

The minors were assessed as adoptable by the DESS. H.A. wanted to be adopted, and referred to her foster parents as mom

and dad. She loved her foster family and felt safe with them. The minor R.A. had formed a loving relationship with his foster parents during the 18 months in their care.

At the section 366.26 hearing, appellant entered a general objection to termination of parental rights, but presented no testimony or other evidence.

The juvenile court terminated parental rights and placed the minors with the foster parents, with a permanent plan of adoption.

## DISCUSSION

Appellant's sole contention is there is insufficient evidence to support the juvenile court's finding that the parent-child exception to adoption does not apply. Appellant has forfeited her claim.

"In dependency litigation, nonjurisdictional issues must be the subject of objection or appropriate motions in the juvenile court; otherwise those arguments have been waived and may not be raised for the first time on appeal. [Citations.]" (*In re Christopher B.* (1996) 43 Cal.App.4th 551, 558.)

Although "application of the forfeiture rule is not automatic," "the appellate court's discretion to excuse forfeiture should be exercised rarely and only in cases presenting an important legal issue." (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) The appellate court's discretion "must be exercised with special care" in dependency matters "[b]ecause these proceedings involve the well-being of children, [for whom]



considerations such as permanency and stability are of paramount importance.” (*Ibid.*)

Appellant argues her claim is not subject to forfeiture because DESS’s adoption assessment weighed the benefits of adoption against the benefits of maintaining the minors’ relationship with appellant, and the juvenile court followed DESS’s recommendations. In support of this argument, she relies on *In re S.M.* (2004) 118 Cal.App.4th 1108. That case is distinguishable because the juvenile court there was presented with the opportunity to address the issue that was raised later on appeal. (*Id.* at p. 1122, fn. 9.) Not so here.

The parent has the burden of establishing an exception to termination of parental rights. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.) Here, at no time during the proceedings did appellant or her counsel make any attempt to argue the applicability of a statutory exception to termination of parental rights. As reflected in the factual summary, *ante*, there was no evidence to support a finding that there would be any benefit to H.A. to maintain her relationship with appellant. Thus, it is understandable that appellant’s counsel did not raise the exception. The juvenile court had no duty to determine sua sponte whether an exception to adoption applied. Thus, appellant forfeited her claim (*In re S.B.*, *supra*, 32 Cal.4th at p. 1293, fn. 2) and is precluded from raising it on appeal. (*In re Rachel M.* (2003) 113 Cal.App.4th 1289, 1295.)

## DISPOSITION

The juvenile court's orders are affirmed.

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HULL, J.

We concur:

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SCOTLAND, P. J.

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CANTIL-SAKAUYE, J.